

Dy. 10/10/97

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEB - 8 1998

In the Matter of)

)

Petition of U S WEST Communications, Inc.)
for Waiver of Sections 61.45(d), 61.46(d) and)
69.152 of the Commission's Rules)

CC Docket No. 97-149

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**PETITION FOR WAIVER**

In this Petition, U S WEST Communications, Inc. ("U S WEST") seeks a temporary waiver of Sections 61.45(d), 61.46(d) and 69.152 of the Federal Communications Commission's ("Commission") rules to enable U S WEST to impose End User Common Line ("EUCL") charges on multi-line business ("MLB") customers in excess of the amounts prescribed by Section 69.152 (without reducing its Carrier Common Line ("CCL") charges as required by Section 61.46(d)) and to make a corresponding exogenous cost adjustment to its price cap index ("PCI"). This waiver is necessary to enable U S WEST to file a tariff to recover from MLB customers the amounts (as determined by the Commission) that U S WEST under-recovered from those customers during the period July 1 through December 31, 1997. Once that tariff takes effect, U S WEST will proceed to refund to the interexchange carriers ("IXC") CCL charges with respect to that same period, as directed by the Commission.

I. BACKGROUND

The Commission's rules require price cap local exchange carriers ("LEC") to allocate the Common Line revenue requirement by projecting their Base Factor Portion ("BFP") for the tariff year; the per line BFP forms the basis for the EUCL



charges that the LEC will assess, subject to the limits on such charges imposed by the Commission's rules. The balance of the Common Line revenue requirement was then recovered through CCL charges.¹

The Commission's rules specify no method for projecting BFP, and the price cap LECs have utilized several methods to make these forecasts. U S WEST has consistently forecasted its BFP by reference to its budget for the coming year. Though its method had received no challenge prior to this proceeding, U S WEST had joined other LECs in asking the Commission to cease the use of forecasted BFP, in favor of historical data, which would remove from this process the uncertainty inherent in any forecast.² The Commission declined to move away from forecasted BFP to calculate the EUCL-CCL allocation.³

In the instant proceeding, AT&T Corp. and MCI Telecommunications Corporation challenged the price cap LECs' BFP forecasts, complaining that the forecasts did not track historic trends. After investigating the matter, the Commission concluded that a number of LECs, including U S WEST, had under-

¹ Effective January 1, 1998, the Commission implemented yet a third charge to cover Common Line costs, the Presubscribed Interexchange Carrier Charge. Because we are here concerned with rates charged in 1997, this change has no effect on the issues here.

² See, e.g., Comments of U S WEST, CC Docket No. 94-1, filed Jan. 11, 1996 at 26-27.

³ In the Matter of Price Cap Performance Review for Local Exchange Carriers, CC Docket No. 94-1, Access Charge Reform, CC Docket No. 96-262, Fourth Report and Order in CC Docket No. 94-1 and Second Report and Order in CC Docket No. 96-262, 8 Comm. Reg. (P&F) 119, 156 ¶ 172, rel. May 21, 1997; appeals pending sub noms. United States Telephone Association v. FCC, Nos. 97-1469, et al. (D.C. Cir.).

forecasted their BFPs over the years.⁴ The Commission thus determined that these LECs' BFP forecasts were unreasonable, and it prescribed a BFP forecast for each of them, using an autoregressive method based on historic BFP data.⁵ Each LEC was to use this prescribed BFP "to recalculate their EUCL charges, CCL charges, and PICCs for tariff year 1997/98."⁶ Despite that, the Commission did not specifically authorize the LECs to charge the recalculated EUCL rates for July-December, 1997.

II. THE COMMISSION SHOULD WAIVE THE APPLICABLE PROVISIONS OF ITS RULES TO ENABLE U S WEST TO COLLECT, OVER A SIX-MONTH PERIOD, THE AMOUNTS IT UNDERCHARGED END USERS, AS DETERMINED BY THE COMMISSION

The BFP issue involves no disallowance; it raises no challenge to the legitimacy of U S WEST's Common Line revenue requirement. The issue is strictly one of the appropriate apportionment of that revenue requirement between end users and IXCs. Yet, if the Commission's Refund Order stands,⁷ it will have the effect of disallowing a substantial portion of U S WEST's Common Line revenue requirement, unless U S WEST is allowed to collect from its end users the amounts it would have charged them had its BFP forecast matched the Commission's

⁴ In the Matter of 1997 Annual Access Tariff Filings, CC Docket No. 97-149, Memorandum Opinion and Order, FCC 97-403, rel. Dec. 1, 1997 ¶ 49 ("Refund Order"), pets. for recon. pending.

⁵ Id. ¶ 83.

⁶ Id. ¶ 84.

⁷ Bell Atlantic has sought reconsideration of that portion of the Commission's Refund Order; U S WEST filed Comments supporting that request. Bell Atlantic

subsequent prescription. U S WEST's proposal will rectify that deficiency.⁸

U S WEST proposes to balance the books by temporarily increasing the EUCL charge to its MLB end users by the amount it understated that charge (determined as prescribed by the Commission). That is, in each state, U S WEST will add to its MLB EUCL rate an amount equal to the difference between the rate determined as prescribed by the Commission and the rate filed by U S WEST in its annual access filing. The incremental charge will remain in effect for six months from the date it takes effect.⁹ Once the tariff change to implement the temporary charge becomes effective, U S WEST will make refunds to the IXC's as prescribed by the Commission.

To implement its proposal, U S WEST requires a waiver of Section 69.152, which limits the MLB EUCL to one-twelfth of the EUCL annual revenue requirement, up to a maximum of \$9. The temporary increase proposed here will move U S WEST's MLB EUCL above the limits prescribed by Section 69.152, as detailed below:

Petition for Reconsideration filed Dec. 31, 1997. Comments of U S WEST filed Jan. 21, 1998 ("U S WEST Comments").

⁸ U S WEST's Comments were filed in support of Bell Atlantic's Petition for Reconsideration, which asks the Commission to reconsider its decision to prescribe per line BFP and order refunds.

⁹ The incremental charge will thus remain in effect for a short period beyond the 1997-98 tariff year.

State	7/1 MLB EUCL	7/1 EUCL (FCC) ¹⁰	Under- recovery	1/1 MLB EUCL	Temporary MLB EUCL
AZ	\$6.79	\$7.64	\$.85	\$9.00	\$9.85
CO	\$8.01	\$9.00	\$.99	\$9.00	\$9.99
IA	\$4.97	\$5.59	\$.62	\$7.40	\$8.02
ID (North)	\$6.42	\$7.23	\$.81	\$9.00	\$9.81
ID (South)	\$7.13	\$8.02	\$.89	\$9.00	\$9.89
MN	\$5.56	\$6.26	\$.70	\$7.45	\$8.15
MT	\$7.51	\$8.44	\$.93	\$9.00	\$9.93
ND	\$5.78	\$6.50	\$.72	\$8.69	\$9.41
NE	\$6.61	\$7.44	\$.83	\$8.90	\$9.73
NM	\$7.84	\$8.82	\$.98	\$9.00	\$9.98
OR	\$6.39	\$7.19	\$.80	\$8.98	\$9.78
SD	\$6.01	\$6.76	\$.75	\$9.00	\$9.75
UT	\$6.44	\$7.25	\$.81	\$8.69	\$9.50
WA	\$5.68	\$6.39	\$.71	\$7.96	\$8.67
WY	\$9.00	\$9.00	\$9.00	\$0	\$9.00

Because U S WEST will not reduce its CCL charges in conjunction with these increases, implementation of its proposal also requires a waiver of Section 61.46(d), which prescribes the method for calculating the CCL, in part by reference to the level of the EUCL.

Finally, U S WEST requires a waiver of Section 61.45(d), which prescribes the types of exogenous cost adjustments a LEC may make to its PCI. U S WEST will need to make a temporary upward exogenous adjustment to its Common Line PCI to accommodate the increased EUCL charges it contemplates filing. It will reverse that adjustment once the temporary EUCL charges have expired.

Absent this temporary increase (or some other suitable recovery mechanism), implementing the refunds ordered by the Commission would deprive U S WEST of Common Line revenue it is unquestionably entitled to receive. The Commission's

¹⁰ That is, the July 1, 1997 MLB EUCL recalculated to reflect the Commission's per line BFP prescription.

access charge rules should not be interpreted to inflict a multi-million dollar penalty on U S WEST, simply because it failed to guess correctly what sort of forecasting method the Commission would find acceptable. The Commission should not allow the process to produce so unfair a result."¹¹

Bell Atlantic has requested reconsideration of the Commission's BFP prescription and its decision to order refunds. If the Commission were to reconsider its decision to prescribe BFPs, or its decision to require refunds, this matter would become moot, and U S WEST would have no need of this waiver.

There is, however, yet a third alternative. In supporting Bell Atlantic's Petition for Reconsideration, U S WEST demonstrated the effect of adding more-current data to the Commission's autoregression. Doing so produces a radically lower estimate of U S WEST's per line BFP for the 1997-98 tariff year (\$6.93, versus the Commission-prescribed figure of \$7.38); adding in data for 1989 and 1990 produces an estimate of \$6.96.

U S WEST does not believe either of these figures is a valid estimate of its per line BFP for the 1997-98 tariff year. Given the instability of the data, we do not believe any autoregression can produce a valid estimate of U S WEST's per line BFP. But because these autoregressions incorporate more data points, they are unquestionably more accurate than the autoregression the Commission used to prescribe U S WEST's per line BFP.


¹¹ The result is particularly unfair, given that the Commission's forecast of U S WEST's per line BFP appears to have been no more accurate than U S WEST's. See U S WEST's Comments at 2-3.

Thus, if the Commission believes an autoregression is the best means of predicting U S WEST's per line BFP in these circumstances, either of these figures would be a suitable substitute for the existing prescription. That action would reduce any refund liability U S WEST might otherwise have, and it would reduce U S WEST's concomitant need to recover that refund from its MLB end users. U S WEST would also increase its CCL rates to make the process revenue neutral. As shown in Attachment 1, these changes greatly reduce the impact on end users; indeed, the net effect is a reduction from the current MLB EUCL in seven states -- even taking into account the temporary increase -- and significantly smaller increases in the remaining states.

For the reasons stated, U S WEST respectfully asks the Commission to grant the waiver requested herein. If the Commission believes the recovery mechanism proposed here is inappropriate, U S WEST respectfully asks the Commission to provide guidance as to the appropriate mechanism for recovery of this shortfall.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: 
Robert B. McKenna
Richard A. Karre
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2791

Of Counsel,
Dan L. Poole

Its Attorneys

February 2, 1998

Attachment 1

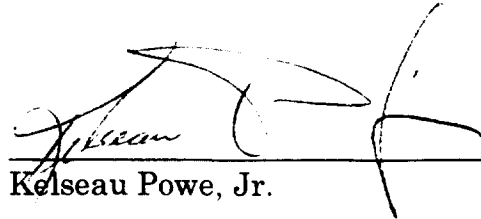
State	A 7/1 MLB EUCL	B 7/1 EUCL (Revised) ¹	C Under- recovery (C=B-A)	D 1/1 MLB EUCL (Rev) ²	E Temp EUCL	F 1/1 EUCL	G Net Effect (G=E-F)
AZ	\$6.79	\$7.18	\$.39	\$8.88	\$9.27	\$9.00	\$.27
CO	\$8.01	\$8.46	\$.45	\$9.00	\$9.45	\$9.00	\$.45
IA	\$4.97	\$5.25	\$.28	\$7.06	\$7.34	\$7.40	(\$.06)
ID (North)	\$6.42	\$6.79	\$.37	\$9.00	\$9.37	\$9.00	\$.37
ID (South)	\$7.13	\$7.54	\$.41	\$9.00	\$9.41	\$9.00	\$.41
MN	\$5.56	\$5.88	\$.32	\$7.07	\$7.39	\$7.45	(\$.06)
MT	\$7.51	\$7.93	\$.42	\$9.00	\$9.42	\$9.00	\$.42
ND	\$5.78	\$6.11	\$.33	\$8.30	\$8.63	\$8.69	(\$.06)
NE	\$6.61	\$6.99	\$.38	\$8.45	\$8.83	\$8.90	(\$.07)
NM	\$7.84	\$8.29	\$.45	\$9.00	\$9.45	\$9.00	\$.45
OR	\$6.39	\$6.75	\$.36	\$8.54	\$8.90	\$8.98	(\$.08)
SD	\$6.01	\$6.35	\$.34	\$8.68	\$9.02	\$9.00	\$.02
UT	\$6.44	\$6.81	\$.37	\$8.25	\$8.62	\$8.69	(\$.07)
WA	\$5.68	\$6.00	\$.32	\$7.57	\$7.89	\$7.96	(\$.07)
WY	\$9.00	\$9.00	\$0	\$9.00	\$9.00	\$9.00	\$0

¹ Reflecting a revised autoregression including 1997 results.

² Reflecting a revised autoregression including 1997 results.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 2nd day of February, 1998, I have caused a copy of the foregoing **PETITION FOR WAIVER** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

*Served via hand-delivery

(CC97149c-COS/DK/ss)

*William E. Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Gloria Tristani
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Michael K. Powell
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Harold Furchtgott-Roth
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*A. Richard Metzger, Jr.
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*James D. Schlichting
Federal Communications Commission
Room 518
1919 M Street, N. W.
Washington, DC 20554

*Judith A. Nitsche
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*Wanda M. Harris
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Southwestern Bell Telephone Company
Room 2403
One Bell Plaza
Dallas, TX 75202

George Petrutsas
Eric Fishman
Paul J. Feldman
Fletcher, Heald & Hildreth, PLC
11th Floor
1300 North 17th Street
Rosslyn, VA 22209

ROSEVILLE

Emmanuel Staurulakis
John Staurulakis, Inc.
6315 Seabrook Road
Seabrook, MD 20706

CONCORD

Jay C. Keithley
Norina Moy
Sprint Local Telephone Companies
11th Floor
1850 M Street, N.W.
Washington, DC 20036-5807

Joe D. Edge
Tina M. Pidgeon
Drinker, Biddle & Reath, LLP
Suite 901
901 15th Street, N.W.
Washington, DC 20005

PRTC

M. Robert Sutherland
Richard M. Sbaratta
Rebecca M. Lough
BellSouth Telecommunications, Inc.
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Edward Shakin
Edward D. Young III
Michael E. Glover
Bell Atlantic Telephone Companies
Eighth Floor
1310 North Court House Road
Arlington, VA 22201

Wendy Blueming
Southern New England Telephone
Company
227 Church Street
New Haven, CT 06510

Nancy C. Woolf
Pacific Bell and Nevada Bell
Room 1529
140 New Montgomery Street
San Francisco, CA 94105

Michael S. Pabian
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

Michael J. Shortley III
Frontier Telephone Companies
180 South Clinton Avenue
Rochester, NY 14646

Robert A. Mazer
Albert Shuldiner
Allison S. Yamamoto
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, N.W.
Washington, DC 20004-1008

ALIAN

Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Jackson
& Dickens
Suite 300
2120 L Street, N.W.
Washington, DC 20037

CHILLICOTHE

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T Corp.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Sandra K. Williams
Sprint Corporation
POB 11315
Kansas City, MO 64112

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Sender's name (Please Print or Type)	Phone
Rebecca Ward	(202)429-3129
Company	
US West, INC.	
Street Address	State ZIP
1020 19th St. Suite 700	Washington, D.C. 20036

I warrant that this shipment is packed adequately to insure safe transportation with ordinary care in handling. You warrant that your package is properly marked and addressed for delivery.

Our liability for delays not caused by your negligence is limited to refund of your delivery charges. We will not be liable for loss or delay caused by events that we cannot reasonably foresee including, but not limited to acts of God, perils of transportation, weather conditions, mechanical delays, acts of war, strikes, commotion, or acts or omissions of public authorities with actual or apparent authority.

WILL NOT BE LIABLE IN ANY CASE FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, WHETHER OR NOT WE KNEW SUCH DAMAGES MIGHT BE INCURRED.

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Federal Communications Commission
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor Room 153-2713
Pittsburgh, Pennsylvania

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USWEST

U S WEST, Inc.
7800 East Orchard Road
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(303) 792-4900

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359 Main Street
Grand Junction, CO 81501

384387
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VOID AFTER 180 DAYS

TO THE ORDER OF

FEDERAL COMMUNICATIONS COMMISS
PO BOX 358140
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PITTSBURGH PA 15251-5140

DATE 01/15/98 CHECK AMOUNT *****5,665.00

J. Anderson

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⑈0384387⑈ ⑆102100918⑆ 606 2004068⑈

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING		FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE		APPROVED BY OMB 3060-0589	
(1) LOCKBOX # 358140		PAGE NO. <u>1</u> OF <u>1</u>		SPECIAL USE FCC USE ONLY	
SECTION A - PAYER INFORMATION					
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) U S WEST Communications, Inc.				(3) TOTAL AMOUNT PAID (dollars and cents) \$5,665.00	
(4) STREET ADDRESS LINE NO. 1 Suite 700					
(5) STREET ADDRESS LINE NO. 2 1020 19th Street, N.W.					
(6) CITY Washington			(7) STATE DC		(8) ZIP CODE 20036
(9) DAYTIME TELEPHONE NUMBER (include area code) 303-672-2791			(10) COUNTRY CODE (if not in U.S.A.)		
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)					
SECTION B - APPLICANT INFORMATION					
(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)					
(12) STREET ADDRESS LINE NO. 1					
(13) STREET ADDRESS LINE NO. 2					
(14) CITY			(15) STATE		(16) ZIP CODE
(17) DAYTIME TELEPHONE NUMBER (include area code)			(18) COUNTRY CODE (if not in U.S.A.)		
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)					
SECTION C - PAYMENT INFORMATION					
(19A) FCC CALL SIGN/OTHER ID		(20A) PAYMENT TYPE CODE (PTC)		(21A) QUANTITY	
(23A) FCC CODE 1		(24A) FCC CODE 2		(22A) FEE DUE FOR (PTC) IN BLOCK 20A	
(19B) FCC CALL SIGN/OTHER ID		(20B) PAYMENT TYPE CODE (PTC)		(21B) QUANTITY	
(23B) FCC CODE 1		(24B) FCC CODE 2		(22B) FEE DUE FOR (PTC) IN BLOCK 20B	
(19C) FCC CALL SIGN/OTHER ID		(20C) PAYMENT TYPE CODE (PTC)		(21C) QUANTITY	
(23C) FCC CODE 1		(24C) FCC CODE 2		(22C) FEE DUE FOR (PTC) IN BLOCK 20C	
(19D) FCC CALL SIGN/OTHER ID		(20D) PAYMENT TYPE CODE (PTC)		(21D) QUANTITY	
(23D) FCC CODE 1		(24D) FCC CODE 2		(22D) FEE DUE FOR (PTC) IN BLOCK 20D	
SECTION D - TAXPAYER INFORMATION (REQUIRED)					
(25) PAYER TIN 0 8 4 0 2 7 3 8 0 0				(26) COMPLETE THIS BLOCK ONLY IF APPLICANT NAME IN B-1 IS DIFFERENT FROM PAYER NAME IN A-1 APPLICANT TIN	
SECTION E - CERTIFICATION					
(27) CERTIFICATION STATEMENT I, <u>Richard Grozier</u> , Certify under penalty of perjury that the foregoing and supporting information (PRINT NAME) are true and correct to the best of my knowledge, information and belief. SIGNATURE <u>Richard Grozier</u>					
SECTION F - CREDIT CARD PAYMENT INFORMATION					
(28) MASTERCARD/VISA ACCOUNT NUMBER: <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> MASTERCARD</div><div><input type="checkbox"/> VISA</div></div> <div style="border: 1px solid black; width: 100%; height: 20px; margin-top: 5px;"></div>					
I hereby authorize the FCC to charge my VISA or MASTERCARD for the services/authorizations herein described.				EXPIRATION DATE: MONTH YEAR DATE	
AUTHORIZED SIGNATURE				DATE	

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3060-0689

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SPECIAL USE

FCC USE ONLY

(1) LOCKBOX # 358140

PAGE NO. 1 OF 1

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

U S WEST Communications, Inc.

(3) TOTAL AMOUNT PAID (dollars and cents)

\$5,665.00

(4) STREET ADDRESS LINE NO. 1

Suite 700

(5) STREET ADDRESS LINE NO. 2

1020 19th Street, N.W.

(6) CITY

Washington

(7) STATE

DC

(8) ZIP CODE

20036

(9) DAYTIME TELEPHONE NUMBER (include area code)

303-672-2791

(10) COUNTRY CODE (if not in U.S.A.)

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

SECTION B - APPLICANT INFORMATION

(11) APPLICANT NAME (if paying by credit card, enter name exactly as it appears on your card)

(12) STREET ADDRESS LINE NO. 1

(13) STREET ADDRESS LINE NO. 2

(14) CITY

(15) STATE

(16) ZIP CODE

(17) DAYTIME TELEPHONE NUMBER (include area code)

(18) COUNTRY CODE (if not in U.S.A.)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEETS (FORM 159-C)

SECTION C - PAYMENT INFORMATION

(18A) FCC CALL SIGN/OTHER ID

(20A) PAYMENT TYPE CODE (PTC)

(21A) QUANTITY

(22A) FEE DUE FOR (PTC) IN BLOCK 20A

FCC USE ONLY

(23A) FCC CODE 1

(24A) FCC CODE 2

(18B) FCC CALL SIGN/OTHER ID

(20B) PAYMENT TYPE CODE (PTC)

(21B) QUANTITY

(22B) FEE DUE FOR (PTC) IN BLOCK 20B

FCC USE ONLY

(23B) FCC CODE 1

(24B) FCC CODE 2

(18C) FCC CALL SIGN/OTHER ID

(20C) PAYMENT TYPE CODE (PTC)

(21C) QUANTITY

(22C) FEE DUE FOR (PTC) IN BLOCK 20C

FCC USE ONLY

(23C) FCC CODE 1

(24C) FCC CODE 2

(18D) FCC CALL SIGN/OTHER ID

(20D) PAYMENT TYPE CODE (PTC)

(21D) QUANTITY

(22D) FEE DUE FOR (PTC) IN BLOCK 20D

FCC USE ONLY

(23D) FCC CODE 1

(24D) FCC CODE 2

SECTION D - TAXPAYER INFORMATION (REQUIRED)

(25)

PAYER TIN

0 8 4 0 2 7 3 8 0 0

APPLICANT TIN

SECTION E - CERTIFICATION

(27) CERTIFICATION STATEMENT

I, Richard Grozier

(PRINT NAME)

Certify under penalty of perjury that the foregoing and supporting information

are true and correct to the best of my knowledge, information and belief.

SIGNATURE Richard Grozier

SECTION F - CREDIT CARD PAYMENT INFORMATION

(28)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION DATE:



MASTERCARD

MONTH YEAR



VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD
for the service(s) (authorization(s) herein described).

AUTHORIZED SIGNATURE

DATE